aim to make an abstract arranged on his own plan, or written in his own language. If it were, he would be entitled to the same protection as the maker of law reports. But his work consists in transcribing his notes, and in perfecting them by correction of slight errors. And in all this it is difficult to see that any great amount of originality is exercised. The fact that he has expended time and money in acquiring the ability to do this sort of work may increase the hardship of his position, but cannot of itself have great weight toward allowing him the copyright. True, copyright law has always regarded liberally the amount of labor necessary to secure its benefits, yet it seems hardly warrantable to bring this case within its scope. The reporter has, indeed, published a report which may differ from others, but it is of something which he did not create, and which required no original research or investigation on his part to prepare. On this point the court forcibly says that, though the report and the speech are different things, still the speech is the only valuable thing in the report. This argument seems convincing and the decision sound.

THE BURDEN OF PROOF OF TESTAMENTARY CAPACITY. — Until recently the law seemed well settled that the party, for whose case the existence of a will was necessary, must establish its validity. Consequently the burden of proof of the testator's testamentary capacity was conceded to be on the party propounding the will, the effect of the presumption in favor of sanity being merely to shift the duty of going forward with the evidence to the contestants, and not to change the burden of establishing. The jury were not required to say the document was the will of a competent testator when they were in doubt. *Barry* v. *Butlin*, 2 Moore, P. C. 480; 1 Greenleaf on Evidence, 152, 16th ed. Several recent cases in this country, however, take a contrary view, and hold that the burden of proof upon the whole case rests upon the contestant, and that the presumption of the sanity of the testator is of evidential value. *Sturdevant's Appeal*, 42 Atl. Rep. 70 (Conn.); *Hallenbeck* v. *Cook*, 54 N. E. Rep. 154 (Ill.). Thayer's Preliminary Treatise on Evidence, 381, clearly points out that, so far is a presumption from being evidence, it is an excuse for not giving evidence, what the Romans called *levamen probationis*. The confusion on this subject is further increased by the decision of the New York Court of Appeals in *Dobie* v. *Armstrong*, 160 N. Y. 584. While recognizing that "ordinarily the burden of proof is upon the party propounding the will," they hold that § 2653a of the New York Code of Civil Procedure, which enacts that "the decree of the surrogate admitting the will to probate shall be *prima facie* evidence of the . . . validity of such will," . . . casts the burden of establishing the incompetency of the testator on the contestant. The court appeared to consider this the only possible construction. A more obvious interpretation, perfectly consistent with the wording and spirit of the section, which avoids overruling the prevailing doctrine on this subject, would be to hold that the *prima facie* case simply shifted the burden of going forward to the contestant, but did not affect the burden on the proponent of establishing ultimately the question in issue. That latter burden never shifts. *Crowninshield* v. *Crowninshield*, 2 Gray, 524. Perhaps the court was confused by the two senses in which the term "burden of proof" is used. The decision seems particularly unfortunate, as in a former case the same

court construed a similar enactment in the opposite and the correct way. *People* v. *Cannon*, 139 N. Y. 32. Unhappily this decision was not brought to the attention of the court in the principal case.

CONTRACTS FOR THE ALLOTMENT OF SHARES. — Many of the more important of the English cases, which established that a contract by mail is complete on the mailing of the letter of acceptance, were contracts for the allotment of shares. These were always treated by the courts as if they were bilateral contracts. *Household Fire Insurance Co.* v. *Grant*, 4 Ex. D. 216. Yet in none of them was the court expressly called upon to decide whether the contract was bilateral or unilateral. This point would seem to be directly involved in a recent case, — *Re London and Northern Bank Limited*, 81 L. T. Rep. 512. A letter withdrawing an application for an allotment of shares in a stock company was received by the company after the directors had alloted the shares, but before the notice of allotment was mailed. The applicant was held to be entitled to have his name removed from the register of shareholders, and to have his deposit returned.

Though the court follow the previous *dicta*, it would have carried out more nearly the actual intention of the parties had it held an allotment of shares to be a unilateral contract complete on the allotment, and subject only to a defeasance in case of laches in not sending the notice of allotment within a reasonable time. Langdell, Summary of the Law of Contracts, § 6. In holding this a bilateral contract, the court would seem to encounter the difficulty of being obliged to hold that the directors could cancel the allotment at any time before the mailing of the notice of allotment. Yet, if that precise case had been presented, it is difficult to believe that the contract would not have been held complete from the time of the allotment, as it was the evident understanding of the parties that the applicant's title to the shares should date from then. Everything that the company was asked to do was already done before the sending of the notice of allotment. How, then, could the sending of this notice be essential to the existence of a contract? And what did the company bind itself by this contract to do? Certainly not to allot the shares. That had already been done. The true view is that the contract is unilateral, and the applicant shows by his language and the nature of the transaction that notice of acceptance is not required, — merely notice of performance. After performance revocation is of course too late. *Carlill* v. *Carbolic Smoke Ball Co.* [1893] 1 Q. B. 262. The point that the contract was unilateral, however, was not taken by counsel, and, considering the number of times the contrary doctrine has been reiterated, this is not surprising.

OTHER FIRES BY OTHER ENGINES. — In actions against a railroad for damage caused by fire negligently allowed to escape from a locomotive, the courts are not fully agreed as to how far evidence is admissible that other locomotives of the defendant have also emitted sparks and caused fires. Where the particular locomotive which is alleged to have set the fire is unidentified, such evidence is almost always allowed either to establish the negligent construction of the defendant's engines generally, or to show a capacity to emit sparks, and thus that the injury